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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,407	11/10/2003	Satoshi Mizutani	20050/0200481-US0	4396

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/705,407	Applicant(s) MIZUTANI ET AL.	
	Examiner Jacqueline F. Stephens	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 12, 14-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 12 and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/21/06 has been entered.

Response to Arguments

2. Applicant's arguments filed 12/21/06 and 10/26/06 have been fully considered but are moot in light of the new rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 1-8, 11, 12, 14-16, and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wierlacher WO 9901093 in view of Schlangen USPN 5618282.

Wierlacher discloses an interlabial pad having a size and weight and flexibility so that is capable of being pinched and held partially or totally in between the labia without forcing. The pad comprises a central axis, a water-permeable surface side sheet 22, an absorbent body 24, and a back side sheet 23, and a mini sheet piece 60 attached to the backsheet of the interlabial pad. The interlabial pad comprises a rear portion low compression rigidity structure provided by fold lines 56 and slit 64 straddling the central axis in the rear portion (page 13, paragraphs 2 and 3). Wierlacher teaches the preferential bending lines are formed in the absorbent core 24 by means of embossments or partial cuts (page 18, paragraph 1). Wierlacher discloses the pad is folded in two with the central axis as the folding axis having two folded parts facing each other and where the rear portion low compression rigidity structure is a joining structure for joining folded parts (Figures 1-3 and page 17, paragraph 3 through page 18

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paragraph 2). Regarding the limitation of a low resistance material, this is a relative term and the examiner considers the materials of Wierlacher to be low resistance as compared to an abrasive material.

However, Wierlacher does not disclose fine changes on its surface on the side opposite the body side. Schlangen discloses an interlabial pad having a baffle 24 with an embossed surface, which is micro-embossed to provide softness and render the material compliant to conform to the contours of the human anatomy (col. 4, lines 17-24). One having ordinary skill in the art would have been motivated to modify the baffle of Wierlacher with micro-embossing to aid in compliancy and softness as taught by Schlangen. The limitations of sliding with another face and the low friction shape making right and left phase shifts is directed to an intended use of the article. "Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963)." If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

As to claim 5, Wierlacher/Schlangen is silent as to the emboss rate. However, the embossed rate would have been obvious by optimizing the amount of embossing on the nonwoven, and the softness, compliancy, and vapor permeability could be optimized by one of ordinary skill in the art for the same reason. Discovering optimum values only

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involves routine skill in the art, *In re Boesch*, 617 F. 3d 272, 205 USPQ 215 (CCPA 1980).

As to claims 6, 7 and 15, Wierlacher/Schlangen discloses a fiber assembly, Wierlacher page 11, paragraph 2.

As to claim 18, the interlabial pad of Weirlacher/Schlangen comprises a mini sheet 6 (Weirlacher Figure 8).


As to claims 11, 12, 19, and 20, the limitations of absorbing vaginal discharge is directed to an intended use of the article. "Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963)." If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

6. Claim 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weirlacher in view of Schlangen USPN 5618282 and further in view of Wray et al. USPN 6332878. Weirlacher discloses the present invention substantially as claimed. However, Weirlacher does not disclose a lubricant. Wray discloses an interlabial pad having a lubricant for the benefit of assisting in positioning (col. 2, lines 46-50). It would have been obvious to one having ordinary skill in the art to modify the invention of Wierlacher/Schlangen with a lubricant for the benefits taught in Wray.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jacqueline F. Stephens
Primary Examiner
Art Unit 3761

January 8, 2007